

IN THE COURT OF APPEALS OF IOWA

No. 3-1037 / 12-1743
Filed January 23, 2014

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ADAM JOHN PITMAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Lee (South) County, Cynthia H. Danielson, Judge.

The defendant appeals his conviction for first-degree murder.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Michael P. Short, County Attorney, and Bruce C. McDonald and Artemio Santiago, Assistant County Attorneys, for appellee.

Heard by Doyle, P.J., and Tabor and Bower, JJ.

BOWER, J.

Adam Pitman appeals his conviction following a jury verdict finding him guilty of first-degree murder. See Iowa Code § 707.2 (2011). On appeal, Pitman contends the district court erred in denying his motion for judgment of acquittal as the evidence was insufficient to establish he acted with specific intent. He also asserts the court erred in denying his motion to suppress inculpatory statements.

Based on Pitman's behavior, his unsolicited incriminating statements, and his inconsistent statements as to the timing, amount, type, and effects of his drug use, a reasonable jury could conclude he had the specific intent to kill his mother. When Pitman initially volunteered incriminating information, he was not being interrogated. Any impairment caused by Pitman's drug use did not prevent him from knowingly, intelligently, and voluntarily waiving his *Miranda* rights. Pitman's statements during the DCI interview were voluntary. Accordingly, we affirm.

I. Background Facts and Proceedings

Twenty-three-year old Pitman lived with his mother, Rosa, in Keokuk, Iowa, and she supported him financially. On August 29, 2011, Rosa and Pitman drove to Illinois, where she obtained a \$600 title loan. On their return trip they picked up Rosa's friend, Susan Francis. Before the women cashed the loan check, they dropped Pitman off at home. Pitman walked to a "head shop" and purchased Caterpillar (synthetic marijuana) and some bath salts. Rosa and Francis returned, picked up Pitman, and they drove to Wal-Mart. Rosa gave Pitman some, but not all, of the loan proceeds. At trial, Francis testified to Pitman's severe drug problem.

Later that same day Rosa and a different friend went to a casino. They returned to Keokuk around 6:30 p.m. Rosa was tired and wanted to take a nap. Rosa and her friend made plans to get together the next day, August 30.

In the early morning hours of August 30, Fort Madison Police Officer Sawyer observed Pitman driving a car without working taillights and initiated a traffic stop—the stop was recorded and Sawyer requested back up.

As Sawyer approached the driver's door, he observed Pitman "dumping what appeared to be prescription pills into his mouth." Sawyer pulled Pitman out of the car and moved him to the ground. Sawyer "attempted to try to stop [Pitman] from swallowing the pills by placing my hands around his throat." Pitman eventually complied with Sawyer's commands to spit out the pills, and Sawyer saw two small piles of pills on the ground. Sawyer asked Pitman, "[W]hat the hell [is] wrong with [you]?" Pitman responded he had just killed his mother. Sawyer "didn't really believe" him. Sawyer handcuffed Pitman but told him it was for his own safety, and he was not under arrest. Pitman replied he would be under arrest because he had just killed his mother. Pitman advised Sawyer he committed the crime at 1602 Concert Street.

Pitman stated he used an extension cord and volunteered that the back door was unlocked. Sawyer asked Pitman if 1602 Concert was in Keokuk but "couldn't really get a response." Sawyer radioed dispatch and asked that a Keokuk police officer conduct a welfare check at the address.

Sawyer observed Pitman's speech seemed to be normal at the beginning of the traffic stop but by the end of the encounter, Pitman appeared to be under

the influence of some substance. Pitman had slurred speech as he attempted, numerous times, to spell his last name. Pitman told Sawyer that he had smoked some synthetic stuff, he was on a bunch of drugs, and he had not slept for three days. Sawyer then helped Pitman to the side of the road.

When Officer Gibbs arrived at the traffic stop, Sawyer explained Pitman had attempted to swallow pills, volunteered he killed his mother, and “was all messed up.” On cross-examination Sawyer testified he made that statement because Pitman “was under the influence of something which led me to believe that he wasn’t to the fullest.”

Sawyer instructed Gibbs to stay with Pitman. Pitman was having a hard time sitting on the ground, so Gibbs put his leg against Pitman’s back to steady him. Gibbs asked, “[W]hat’s going on?” Pitman replied he just killed his mother. Gibbs responded: “Are you serious?” Pitman replied: “Yes, without a doubt serious.” Pitman warned the officer he was not going to repeat himself and stated he used an electrical cord. Pitman also stated he had been using synthetic drugs.

An ambulance crew arrived shortly before 6:00 a.m., and Sawyer told a crew member Pitman’s handcuffs could be removed if needed. Pitman was taken by ambulance to the Fort Madison hospital—a two-minute ride. When the ambulance technician sitting beside Pitman asked him about the drugs he had taken, Pitman responded he would not tell her until they reached the emergency room because he only wanted to list the drugs once. While Pitman was being

moved from the ambulance cot to the emergency room bed, he volunteered that he had killed his mother.

Pitman told the hospital staff he was bipolar and had schizophrenia. Pitman also stated he had been consuming Night Lights and Caterpillar and had been taking Lorazepam and carbamazepine (drugs for anxiety and depression). Pitman was uncooperative with the medical staff.

Gibbs followed the ambulance and observed Pitman at the hospital. Gibbs testified Pitman was agitated and had mood shifts: “He would become sad and upset, and then he would become calm and what appeared as normal again.” Pitman stated he was a meth addict. Pitman told Gibbs he was having flashbacks—he remembered his mom “covered up in a trash bag” and remembered telling his mother he was sorry and then leaving abruptly. Pitman also stated “he barely remembered anything.” Pitman pointed out scratch marks on his arms to Gibbs and volunteered the marks were defensive wounds from his mother.

During cross-examination Gibbs testified: “Q. [I]n your report you [stated] that you thought that Adam was mentally unstable at the hospital; correct? A. I felt that he was emotionally unstable. Q. But not mentally unstable? A. It’s possible. He went from calm to upset several times.”

The ambulance technician testified because Pitman was uncooperative, he was transferred to an Iowa City hospital. The technician again sat beside Pitman, and she only asked about his comfort and his medical issues. Pitman was tearful and emotional and at times would mumble unintelligible statements.

But the technician wrote down the statements she was able to understand—Pitman stated: (1) “I really fucked up”; (2) “I don’t know why I did it”; (3) “Sorry I was a jerk, but I’m in one hell of a position”; and (4) “I’m upset—I did a bunch of bad drugs that made me snap and kill my mom while she slept.” During the ride, Pitman also talked about science fiction, for example, “wouldn’t it be cool if we could do something and send it to outer space.” But those statements did not make sense to the technician.

Meanwhile, officers discovered Rosa’s body on the bedroom floor of 1602 Concert. A garbage bag was tied over her head and a knife was on the floor next to her. The criminologist observed a telephone cord and an extension cord wrapped tightly around her neck and knotted. In the house’s office area, the contents of a purse had been dumped out and scattered over the floor. Also, a tinfoil packet marked Caterpillar was on the desk. A later autopsy showed Rosa “died from asphyxia due to ligature strangulation and suffocation.”

Around 9:15 a.m., Pitman arrived at the University of Iowa hospital emergency room, where Dr. Miller treated him for a potential overdose. Pitman responded contextually to Dr. Miller’s questions. He provided a medical history, listed the medications he was taking, and exhibited varying emotions. Pitman stated he had taken “Caterpillar,” a form of synthetic marijuana. Pitman initially refused Dr. Miller’s recommendations for testing. Dr. Miller concluded that Pitman was in no acute physical distress, and Pitman had the capacity to make decisions: “When I questioned him, he knew that he was at the University of Iowa

and the date. He knew who he was, and when I explained to him why I wanted the EKG . . . he then consented.”

Dr. Miller noted “four and one half hours after ingestion, [Pitman] has stable vital signs and is alert and oriented. He understands . . . the ramifications of what has occurred and by my current assessment has the capacity to make decisions.” Dr. Miller also noted Pitman denies being suicidal or homicidal and a psychiatric evaluation would follow to further determine his decision-making capacity.

Dr. Miller testified he told the DCI agents Pitman’s condition was amenable to being interviewed because none of Pitman’s drug levels and none of the drugs Dr. Miller prescribed (ibuprofen and a nicotine patch) caused him concern regarding Pitman’s ability to understand questions and function appropriately.

From about 10:10 a.m. to 11:27 a.m. on August 30, DCI Agent George interviewed Pitman at the Iowa City hospital. Prior to speaking with Pitman, Agent George spoke to Dr. Miller and specifically asked if Pitman could be interviewed. Dr. Miller replied that Pitman was lucid and aware and gave no indication that Pitman should not be interviewed.

After entering Pitman’s hospital room, Agent George introduced himself and the other agent. Agent George read Pitman his *Miranda* rights. Pitman replied: “I understand that.” Pitman signed a *Miranda* waiver. Agent George testified Pitman appeared to understand his questions, and he gave appropriate and cogent responses. For example, early in the interview Pitman accurately

provided his date of birth, his social security number, and his phone number. When Pitman was asked about his mother's last name, he stated, "That is a good question," and then accurately provided a series of different last names.¹

At times Pitman was emotional and expressed remorse, but he described his recent actions in great detail, stating: He woke up between 9:00 and 11:00 a.m. on the 29th and smoked a joint of "fake weed." Pitman then went to the "head shop" and asked the clerk, "What's the top selling on the new shit?" Pitman bought Caterpillar and Night Light, snorting the Night Light, a synthetic drug he had not snorted before, at 1:00 or 2:00 p.m. He then went to Wal-Mart but he left quickly because he felt paranoid. Pitman even listed Rosa's Wal-Mart purchases.

After returning home from Wal-Mart, he smoked Caterpillar and snorted Night Light, but he did not use methamphetamine. Pitman stated at some point he took prescription drugs, including Lorazepam. After Rosa went to her bedroom he used the computer and also "got high." When Rosa fell asleep, Pitman went into her bedroom and cut the cords to her telephone, television, and fan—activity he described to Agent George as the time he "premeditated all this." Rosa woke up, asked what he was doing, and Pitman responded he needed to use her telephone.

Sometime between 1:30 and 3:00 a.m., Pitman took a serrated knife with a black handle from the kitchen sink and stood at the bathroom door mulling over

¹ Initially, Pitman was speaking slowly, deliberately, and in a fragmented manner. Agent George explained this tempo was due to Pitman's writing—"he was speaking slowly as he was writing down word for word what he was actually saying. He did that for just a short time." Subsequently, the tempo of the interview accelerated.

a decision: "Shoot, it'd be a hell of a lot easier with her out of the way," but "if I take her out . . . what's left?"

When Pitman again entered Rosa's room, this time with the knife, she woke up and cried, "Oh, God, Adam, no." Pitman explained that he "proceeded with the, uh, acts at hand." When Rosa pleaded with him to stop, Pitman told her: "This is the way it's supposed to be." Pitman thought he could "cut her, but she's strong [] so I flipped her over and choked her." When Pitman's arms got tired, he grabbed an extension cord and wrapped it around Rosa's neck. Because she could still breathe a little, Pitman then grabbed another cord and tied it much tighter. During the killing Pitman told Rosa he was sorry, he loved her, and he wanted to end her pain. Pitman also "prayed to her the whole time."

After Pitman covered Rosa, he took everything from the house that he thought was valuable and loaded it in the car.² Pitman planned to drive to Wisconsin and "try and get away as long as I could until you guys caught me." He "had enough pills in that car to lay me out." Pitman later explained he took some pills at the house and some more just after he was pulled over. His goal was not to commit suicide but to "[j]ust ruin the part of my brain to not remember this . . . horrible, horrid thing."

Pitman stated he killed his mother because he wanted to end her pain, to free her from emphysema, and to free her from financial problems. In the past, Rosa told him, "[I]f I keep breathing like this tomorrow, I don't want to step

² During a search of the car, authorities discovered Rosa's driver's license, a flowered jewelry box, a small cedar jewelry box, a wallet containing \$257, credit cards, and bottles of prescription medicine for Pitman.

another step.” Pitman also was angry with his life and blamed Rosa for his troubles. Rosa’s worries included Pitman “going out on a dope trip.” Even though Rosa protested, Pitman continued to choke her because she stopped fighting when he told her “this has to end. This is . . . this is over. The pain, all the bullshit, all of it.”

Agent George asked, why this particular morning? Pitman could not “think of one reason except for the fact that I wanted to get high.”

Q. How would killing your mom prevent you from getting high? A. . . . [B]ecause I’m an addict and when I go on meth, I have different personality traits that, uh, most people don’t comprehend or [tolerate]. (Unintelligible) homeless if I’m on meth. Why (unintelligible) tweak your (unintelligible) aren’t allowed outside of mommy’s house. Uh, I really can’t tell you what brought on the killing [of] mom. I can’t.

Pitman denied arguing with his mom before she went to bed, stating, “I completely, one hundred percent blame it on the drugs, because I’ve never, ever snapped like that.”

During the first interview, Pitman asserted himself by showing his irritation and questioning Agent George about asking him the same question twice. Also, when Agent George asked follow-up questions in quick succession, Pitman compared the interview to a game of Jeopardy. When asked for his consent to have his photograph taken, Pitman declined.

At some point after the first interview, psychiatrist Dr. Flaum evaluated Pitman. Dr. Flaum testified Pitman answered simple, non-emotionally charged questions logically but became “much more vague and hard to follow” when “asked less structured questions” or when “discussing more emotionally charged

kinds of issues.” Dr. Flaum was “struck by how freely [Pitman] was admitting those actions. It seemed like someone who was not thinking clearly about the consequences of making those kinds of comments.” The suppression ruling describes this interaction:

[Pitman] described to Dr. Flaum his history of emotional and psychological issues. [Pitman] explained . . . the different medication he had taken over the years as well as his history of drug abuse. [Pitman] had been a heavy methamphetamine user since [age] thirteen but had not used it in the last several months. [Pitman] claimed, however, to have consumed excessive amounts of Ativan and Lorazepam along with synthetic marijuana the day before. None of the medical records or laboratory results confirmed the actual type or quantity of drugs [Pitman] actually ingested that day other than [Pitman’s] self-reported use and prescription bottles found in [Pitman’s] car.

After Dr. Flaum’s meeting with Pitman and forty-five minutes after the first interview ended, Agent George returned to Pitman’s room. The second interview lasted less than ten minutes. Inconsistent with the first interview, Pitman stated he did *not* take his prescription drugs on August 29. He also stated it was the first time he had used the Night Light pills and their effect was to give him “energy.” He smoked just a few cigarettes of Caterpillar. After he smoked Caterpillar, he felt the same—“It does nothing to you.” Agent George then asked about the plastic bag on Rosa. Pitman stated: “Man . . . you have gotten me to be the most patient person,” and “I seriously think I’m done and that’s it.” Agent George ended the interview.

Later chemical testing showed a foil packet found during the investigation contained synthetic marijuana, and a green tube found in Pitman’s car contained butylone, a synthetic drug similar to methamphetamine and commonly known as

bath salts. The prescription bottles found in the car contained carbamazepine, hydroxyzine and citalopram.

The State charged Pitman with first-degree murder. Defense counsel filed a motion to suppress Pitman's incriminating statements. After a hearing, the court denied the motion. Trial commenced in July 2012. The jury viewed the traffic stop video recording and heard the audio of Agent George's two interviews. At the close of the State's case, defense counsel moved for judgment of acquittal on the grounds the State did not prove Pitman acted with specific intent. The court denied the motion.

The defendant's expert, Dr. Paul Perry, opined Pitman voluntarily snorted bath salts but was involuntarily intoxicated because he had never snorted this particular type of bath salts before and did not expect the resultant effect. The jury received Dr. Perry's written report, stating:

This incident was the first time [Pitman] ingested and experienced the completely unexpected mental status altering effects of the Night Light Bath Salts in contrast to his previous experience with Circle V Bath Salts [I]t is clear that the pharmacological response generated by the Night Lights were disproportionate to that normally expected from the "street" methamphetamine [Pitman] . . . had abused in the past. [Pitman] expected a hallucinogenic high similar to his previous experience with Circle V Bath Salts. In reality, what he experienced was a "high" characterized by an acute psychotic reaction manifested as a bizarre euthanasia delusion thereby suggesting a pathological intoxication Finally, it is worth noting that despite having a reasonably normal mental status when interviewed at University Hospital this is predictable since adverse mental status changes are reported to be approximately only about six hours in duration.

Defense counsel also presented Dr. Flaum's suppression testimony that Pitman could not appreciate the nature or consequences of his actions. Counsel again

moved for judgment of acquittal. The court denied the motion, the jury returned a guilty verdict on the first-degree murder charge, and Pitman now appeals.

II. Scope and Standards of Review

A motion for judgment of acquittal challenges the sufficiency of the evidence, and we review for correction of errors at law. *State v. Henderson*, 696 N.W.2d 5, 7 (Iowa 2005). In determining whether the district court should have granted the motion, it is not our job to resolve conflicts in the record, to assess witness credibility, or to weigh the evidence. *State v. Hutchison*, 721 N.W.2d 776, 780 (Iowa 2006). Those functions rest with the jurors. *Id.* We decide if the evidence could persuade a rational jury that the defendant was guilty beyond a reasonable doubt. *Id.* We “view the evidence in the light most favorable to the State, including legitimate inferences and presumptions that may fairly and reasonably be deduced from the record.” *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000).

We review Pitman’s constitutional challenges of the denial of his motion to suppress de novo. *See State v. Palmer*, 791 N.W.2d 840, 844 (Iowa 2010). We evaluate the totality of the circumstances as shown by the whole record. *Id.* We give deference to the trial court’s fact findings but are not bound by them. *Id.* We consider the evidence from the suppression hearing and evidence introduced at trial. *Id.*

III. Sufficiency of the Evidence—Specific Intent

At trial, Pitman asserted an intoxication defense. On appeal, Pitman challenges the sufficiency of the evidence proving he acted with the specific

intent to kill his mother. See *State v. Templeton*, 258 N.W.2d 380, 383 (Iowa 1977) (ruling when the defendant relies on a voluntary intoxication defense, “the burden of proving specific intent does not leave the State”).³ The jury was instructed specific intent “means not only being aware of doing an act and doing it voluntarily, but in addition, doing it with a specific purpose in mind.”

The element of specific intent is seldom susceptible to proof by direct evidence. *State v. Evans*, 671 N.W.2d 720, 724–25 (Iowa 2003); see *State v. Radeke*, 444 N.W.2d 476, 479 (Iowa 1989) (generally a defendant will “not admit later to having the intention which the crime requires”). Intent may be inferred by the surrounding circumstances. *State v. Taylor*, 689 N.W.2d 116, 132 (Iowa 2004). “[A]n actor will ordinarily be viewed as intending the natural and probable consequences that usually follow from his or her voluntary act.” *Id.* “The requirement of proof beyond a reasonable doubt is satisfied if it is more likely than not that the inference of intent is true.” *State v. Finnel*, 515 N.W.2d 41, 42 (Iowa 1994).

³ Jury Instruction No. 21 stated:

The State must prove all of the following elements of the crime of Murder in the First Degree:

1. On or about the 30th day of August, 2011, the Defendant strangled Rosa Pitman,
2. Rosa Pitman died as a result of being strangled.
3. The Defendant acted with malice aforethought.
4. The Defendant acted willfully, deliberately, premeditatedly and with a specific intent to kill Rosa Pitman.

If the State has proved all of these elements, the Defendant is guilty of Murder in the First Degree. If the State has failed to prove any one of these elements, the Defendant is not guilty of Murder in the First Degree, and you will then consider the charge of Murder in the Second Degree

The court instructed the jury on Pitman's intoxication defense. Instruction No. 20 states:

The defendant claims he was under the influence of intoxicants or drugs at the time of the alleged crime. The fact that a person is under the influence of intoxicants or drugs does not excuse nor aggravate his guilt.

Even if a person is under the influence of an intoxicant or drug, he is responsible for his act if he had sufficient mental capacity to form the specific intent necessary to the crime charged or had the specific intent before he fell under the influence of the intoxicant or drug and then committed the act. Intoxication is a defense only when it causes a mental disability which makes the person incapable of forming the specific intent.⁴

We treat the voluntary use of drugs and the voluntary use of alcohol similarly. See Iowa Code § 701.5 ("The fact . . . a person is under the influence of intoxicants or drugs . . . may be shown where it is relevant in proving the person's specific intent . . . at the time of the . . . criminal act."); see *also State v. Hall*, 214 N.W.2d 205, 207 (Iowa 1974) (noting the defendant did not take the pill by mistake and knew it was a mind-affecting drug (citing *Bennett v. State*, 257 S.W. 372, 374 (Ark. 1923) (rejecting the defendant's excuse the whisky had a different effect than anticipated))); *Commonwealth v. Campbell*, 284 A.2d 798, 801 (Pa. 1971) (stating the non-predictability of the effect of LSD does not change the law of criminal responsibility).

Pitman points to Dr. Flaum's testimony—Pitman could not appreciate the nature or consequences of his actions—and Dr. Perry's testimony—Pitman could

⁴ "Voluntary temporary intoxication" is not a defense to the criminal consequences of one's conduct. *State v. Booth*, 169 N.W.2d 869, 873 (Iowa 1969). But when "specific intent must be shown, intoxication" that prevents "one from forming such intent is material." *Id.* at 874; see *State v. Artzer*, 609 N.W.2d 526, 531 (Iowa 2000) (recognizing voluntary intoxication is a defense to the specific intent element of a crime).

not form the specific intent to murder Rosa. Pitman claims he did not ingest the substances knowing they would cause delusions and argues his expert opined his intoxication was involuntary because the results were not expected. Pitman also argues his drug-induced intoxication rendered him unable to form the requisite specific intent because his “debilitated, psychotic, and delusional state deprived him of the ability to act voluntarily.”

The State notes the inconsistencies in Pitman’s statements to the DCI regarding the timing and type of drugs he took on the day of the murder⁵ and argues Pitman’s interview statements of the minimal effects from the drugs undermine his later claims the drugs made him delusional. The State points out Dr. Perry’s opinion was based on his understanding that Pitman snorted the entire amount of the bath salts at 9:00 p.m. the night of the killing, an understanding inconsistent with the usage Pitman described to Agent George.

The State also argues the jury could reasonably find that while Pitman was at the hospital, any indications he was under the influence of drugs could be a consequence of the pills Sawyer saw him pour in his mouth *after* the killing. We agree the officer’s testimony that Pitman’s speech was normal at the beginning of the traffic stop supports this inference. Finally, the State argues Pitman provided three motives for the killing during his interviews—he wanted to

⁵ Pitman did not give precise times for ingesting the drugs. He first told the DCI agents that he snorted Night Light around 1:00 or 2:00 p.m. but later stated he smoked Caterpillar, snorted Night Light, and took prescription drugs at some point after he returned home from Wal-Mart. At the second interview, Pitman told the agents he did *not* take his prescription drugs on the day of the killing and minimized the effects of the drugs.

free Rosa from her problems, he was angry with Rosa for her role in his troubled life, and he needed money.

The jury was faced with conflicting evidence on the issue of Pitman's specific intent and the applicability, at the time of the killing, of Pitman's voluntary intoxication defense. The jury, as the finder of fact, was free to give the defense experts' testimony "such weight as they thought it should receive." *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006). The jury is free to "accept or reject" any of the witnesses' testimony. *Id.* "The fact finder is not obliged to accept expert testimony, even if it is [not] contradicted, although testimony should not be arbitrarily and capriciously rejected." *Waddell v. Peet's Feeds, Inc.*, 266 N.W.2d 29, 32 (Iowa 1978). The very function of the finder of fact is to sort out the evidence presented and place credibility where it belongs. *See Shanahan*, 712 N.W.2d at 135.

Viewing the evidence in the light most favorable to the State, we conclude the jury's rejection of the testimony of Drs. Flaum and Perry was neither arbitrary nor capricious. Pitman entered his mother's room and cut several cords. Pitman told Agent George that Rosa "was sleeping the whole time I premeditated this." Rosa woke up while Pitman was cutting the cords, and he had the presence of mind to lie to her, saying he needed to use her telephone. Pitman stood with a knife and deliberated whether or not he should carry out the killing. Pitman entered Rosa's room and attacked her with the knife he obtained *before* his deliberation. When Pitman was unable to kill his mother by stabbing her, he "choked her," making use of two different cords. During the killing, Pitman

apologized to his mother for his actions. Based on his behavior, his unsolicited statements at the traffic stop and during the ambulance ride, and his inconsistent statements as to the timing, amount, type, and resultant effects of his drug use, a reasonable jury could conclude Pitman had the specific intent to kill Rosa. The jury was under no obligation to accept the defense experts' opinions to the contrary.

IV. Custodial Interrogation

A. Initial Statements. Pitman argues the inculpatory statements he made during the traffic stop, during his trip to the hospital, and during his treatment at the Fort Madison hospital were the product of custodial interrogation. He contends because *Miranda* warnings were not given, the court erred in denying his motion to suppress those statements.

To bring a viable *Miranda* claim, Pitman must have been “in custody” during an “interrogation.” See *State v. Davis*, 446 N.W.2d 785, 788 (Iowa 1989). *Miranda* warnings need not be given unless there is *both* custody and interrogation. *State v. Simmons*, 714 N.W.2d 264, 274 (Iowa 2006). Custodial interrogation is “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *Id.*

We need not address the custody element because we find the interrogation element dispositive. Interrogation includes questions and “police conduct which is calculated to, expected to, or likely to evoke admissions.” *Id.* Here, Pitman freely and immediately volunteered information about Rosa’s killing

when asked a general, open-ended question by Sawyer. Pitman freely and immediately volunteered information about Rosa's killing when Gibbs asked a general question. In both circumstances, Pitman chose not to respond with information about the traffic stop or about swallowing pills but chose to respond with information about the recent killing.

Additionally, our supreme court recognizes an exception to the *Miranda* requirements where a situation poses a threat to the public safety and the need for answers about the threat outweighs the rule protecting a defendant's privilege against self-incrimination. *Id.* at 275. We apply the exception where the officer's question is not solely designed "to elicit testimonial evidence." *Id.* Sawyer's follow-up questions to Pitman about the time and location of the alleged killing fall within the public safety exception. The purpose of the questions was to send other officers to the address to check on the welfare of Pitman's mother. Any questions by either Sawyer or Gibbs were focused on the welfare of Pitman and his mother. Their questions were not focused on obtaining evidence. Accordingly, Pitman was not interrogated during the traffic stop.

The record also shows Pitman was not interrogated in the ambulance or while at the Fort Madison hospital. During the ride to the Iowa City hospital, Pitman volunteered statements to the technician responsible for his health and safety during the trip. Pitman volunteered he killed his mother as he was being switched between beds and also volunteered several statements to Gibbs. On all of these occasions, no one questioned Pitman about the killing. Instead, Pitman spoke freely and volunteered the information.

Upon our de novo review, we conclude Pitman's statements were freely made and were not the product of an interrogation.

B. Knowing, Intelligent, and Voluntary *Miranda* Waiver. Agent George spoke with Pitman's treating physician before questioning him and was told Pitman was lucid, aware, and able to make decisions. Agent George obtained a verbal and written *Miranda* waiver from Pitman before questioning him. The *Miranda* warning read to Pitman conveyed his right to consult with an attorney and to have the attorney present during questioning.

On appeal, Pitman argues he "could not have validly waived his *Miranda* rights as he had a long history of psychotic afflictions, and he was under the influence of several drugs, both prescription and non-prescription." Pitman points to the testimony of Dr. Flaum. But the district court concluded Dr. Flaum's opinion Pitman was intoxicated "is unsupported and contrary to the record." The court recognized Dr. Flaum based his opinion not on Pitman's toxicology report but on Pitman's self-reporting of the substances taken, and his slight slurring of speech.

A defendant can choose to knowingly, intelligently, and voluntarily waive his *Miranda* rights. *State v. Ortiz*, 766 N.W.2d 244, 251 (Iowa 2009). We assess the validity of Pitman's waiver by examining the totality of the circumstances surrounding the DCI agents' interrogation. See *id.* at 252. The State has the burden of proving a valid waiver by a preponderance of the evidence. *Id.*

In determining whether Pitman's waiver was made knowingly and intelligently, we analyze if Pitman knew that he did not have to speak to the DCI

agents without counsel and understood that statements provided to the police could be used against him. See *id.* Pitman need not understand “the tactical advantage of keeping silent in order to make a valid waiver.” *Id.* A voluntary waiver is “the product of [Pitman’s] free and deliberate choice” and not the product of the agents’ “intimidation, coercion, or deception.” See *id.* We turn to the circumstances surrounding Pitman’s waiver.

Twenty-three-year-old Pitman graduated from high school, had been married, had a child, and was familiar with the criminal justice system. Agent George characterized his intelligence as “average if not above average.” The DCI interviews were of short duration, and the agents did not threaten, deceive, or make promises to Pitman. We note Pitman was discharged from the hospital to law enforcement about four hours after the start of the first interview.

Pitman understood Agent George’s questions, he gave coherent responses, and his responses were appropriate to the questions. At the start of the interview and immediately after waiving his rights, Pitman provided detailed personal information about both himself and his mother. Pitman’s recollections of the killing and of the day’s events were also detailed and not illogical. Pitman was assertive and made decisions—he challenged repetitive questions, he declined to be photographed, and he complained the handcuffs were uncomfortable.

After our de novo review, we conclude any impairment caused by Pitman’s drug ingestion did not prevent him from knowingly, intelligently, and voluntarily waiving his *Miranda* rights.

C. The Voluntariness of Pitman's Statements. Pitman argues that, notwithstanding the *Miranda* admonition, his responses to Agent George's questions were involuntary. Pitman points to his lack of sleep, his drug use, and his history of psychosis and bipolar disorder. He asserts his statements were involuntary "for the same reasons his *Miranda* waivers were invalid."

Iowa courts recognize a separate issue of voluntariness distinct from the question addressed above—whether Pitman's *Miranda* waiver was voluntary. See *State v. Hodges*, 326 N.W.2d 345, 347 (Iowa 1982) ("There is no claim . . . defendant's [*Miranda*] waiver was involuntary . . . [the] question is whether his statements were voluntary."). "The State bears the burden of proving by a preponderance of evidence that an accused's confession is voluntary." *State v. Bowers*, 661 N.W.2d 536, 542 (Iowa 2003). Recently, our supreme court reiterated the applicable standard: "Under a constitutional totality-of-the-circumstances voluntariness analysis, statements are voluntary if the defendant's will is not overborne or his capacity for self-determination is not critically impaired." *State v. Madsen*, 813, N.W.2d 714, 722 (Iowa 2012).

In *State v. Countryman*, 572 N.W.2d 553, 558-59 (Iowa 1997), the court rejected a similar voluntariness challenge based on the defendant's claim she was under the influence of drugs—the court concluded her drug use did not render her statements involuntary. The *Countryman* court found the defendant "does seem to have been under the influence of drugs and was confused" but also noted she was easy to understand, responded appropriately to questions about her name and where she was from, and appreciated the "nature and

consequences of her statements.” 572 N.W.2d at 559. The court remarked she ingested the drugs of her own volition and ruled our constitutional guarantees “do not ‘protect a defendant from his [or her] own compulsions or internally-applied pressures which are not the product of police action.’” *Id.* (quoting *United States v. Guerro*, 983 F.2d 1001, 1004 (10th Cir. 1993)); see *State v. Edman*, 452 N.W.2d 169, 171 (Iowa 1990) (finding defendant’s statement voluntary where the officer conducting the questioning considered the defendant to be as intoxicated as any person he had ever seen); see also *State v. Wilson*, 264 N.W.2d 614, 614–15 (Iowa 1978) (concluding defendant’s inculpatory remarks admissible though his eyes were glassy, he looked a “little spacey,” and he appeared drowsy); *State v. Rank*, 214 N.W.2d 136, 139 (Iowa 1974) (finding defendant’s incriminating statements admissible despite uncontroverted evidence he was “high” on a controlled substance).

As in *Countryman*, Pitman’s drug use did not render his statements involuntary. Pitman’s argument to the contrary is without merit. Pitman used the drugs of his own volition and the Constitution does not protect him from his “own compulsions or internally-applied pressures which are not the product of police action.” *Countryman*, 572 N.W.2d at 559; see *Colorado v. Connelly*, 479 U.S. 157, 164 (1986) (“[A] defendant’s mental condition, by itself and apart from its relation to official coercion,” is not dispositive “of the inquiry into constitutional voluntariness.”). The State established Pitman’s statements were voluntary and admissible.

AFFIRMED.